

# EXHIBIT 1

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**APR 23 2007**

**CLERK OF THE SUPERIOR COURT  
By Esther Coleman, Deputy**

Maureen E. McFadden, SBN 203781  
LAW OFFICES OF MAUREEN E. MCFADDEN  
819 Bancroft Way  
Berkeley, CA 94710  
Ph (510) 845-5203  
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Attorney for Plaintiff  
MEGAN KELLY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED JURISDICTION**

**MEGAN KELLY,**

**Plaintiff,**

**vs.**

**APPLERA CORPORATION and DOES 1-20,  
inclusive,**

**Defendants.**

Case No.: **RG 07322056**

**COMPLAINT FOR DAMAGES**

- 1. Failure to Engage in the Interactive Process in Good Faith**
- 2. Failure to Accommodate**
- 3. Employment Discrimination - Disability**

**BY FAX**

**Plaintiff Megan Kelly alleges as follows:**

**GENERAL ALLEGATIONS**

- 1. Plaintiff Megan Kelly is an individual who resides in Alameda County.**
- 2. From on or about February 2002 and continuing to the present, plaintiff has been employed as an Associate Production Chemist at Applied Biosystems, which is part of Applera Corporation. At all times relevant hereto, plaintiff worked at Applera Corporation's Pleasanton location, which is in Alameda County. Plaintiff was at all times relevant to this action an "employee" of defendant Applera Corporation as that term is defined in California Govt. Code § 12926(c), part of the California Fair Employment and Housing Act ("FEHA," Govt. Code § § 12900 et seq.)**
- 3. Defendant Applera Corporation was a corporation doing business in Alameda County, California at all times relevant hereto. Applera Corporation is and all times relevant**

**COMPLAINT FOR DAMAGES - 1**

*Exhibit H*

1 hereto has been plaintiff's "employer" as that term is defined in California Govt. Code §§  
2 12926(d), 12940(a), and 12940(j)(4)(a).

3 4. The acts and omissions described herein all occurred in Alameda County.

4 5. The true names and capacities, whether individual, corporate, associate, or  
5 otherwise of the defendants named herein as DOES 1-20, inclusive, are unknown to plaintiff at  
6 this time and therefore said defendants are sued by such fictitious names. Plaintiff will seek  
7 leave to amend this complaint to insert the true names and capacities of said defendants when the  
8 same becomes known to her. Plaintiff is informed and believes and based thereon alleges that  
9 each of the fictitiously named defendants is responsible for the wrongful acts alleged herein, and  
10 are therefore liable to her as alleged hereinafter.

11 6. Each of the defendants was the agent of the remaining defendants, and in doing  
12 the acts alleged, was acting both individually and within the course and scope of such  
13 agency/employment, with the knowledge/consent of the remaining defendants.

14 **FIRST CAUSE OF ACTION**

15 **Failure to Engage in the Interactive Process in Good Faith**

16 **(Against all Defendants)**

17 7. Plaintiff incorporates by reference paragraphs 1-6 above, as though fully set forth  
18 herein.

19 8. On or about July 6, 2004, plaintiff tripped and sprained her ankle. In September  
20 2004, after a short medical leave and physical therapy, plaintiff was released to return to work.  
21 As part of her return to work, plaintiff was supposed to be able to sit down whenever she needed  
22 to. However, defendants were extraordinarily busy during this timeframe, and short-handed.  
23 Plaintiff was pressured to get orders done quickly, and was seldom able to sit down.

24 9. On or about September 21, 2004, while moving about extensively and attending  
25 to multiple tasks at the same time, plaintiff re-injured her right ankle. Emergency room  
26 physicians diagnosed plaintiff with another ankle sprain, and she was again taken off of work.  
27 The re-injury was quite serious, in that plaintiff's ankle did not heal well, and she continued  
28 experiencing serious instability in her right ankle. Tests performed by plaintiff's disability

1 insures in or about January 2005 to evaluate plaintiff's readiness to return to work seriously  
2 injured plaintiff's left wrist, requiring a visit to the emergency room. Several subsequent falls  
3 further aggravated the ankle injury, and plaintiff also sustained wrist injuries in some of those  
4 falls.

5 10. Plaintiff's ankle condition is a physical impairment that limited her ability to  
6 perform the major life activity of work. Plaintiff's ankle condition constituted a physical  
7 disability within the meaning of Govt. Code § 12926(k).

8 11. The severity of plaintiff's disability required her to remain off of work for a  
9 period of time. Plaintiff presented defendants with physicians' notes in support of her requests  
10 for time off of work. Plaintiff also regularly left telephone messages with her immediate  
11 supervisor, Jonathon Laosiri, regarding her status and the progress of her recovery.

12 12. In January 2006, plaintiff's physicians determined that she was well enough to  
13 return to work, with restrictions on the number of hours she could work, a restriction on lifting  
14 any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes.  
15 Plaintiff provided defendants with a physician's note authorizing her to return to work, and  
16 specifying these restrictions.

17 13. Plaintiff's immediate supervisor failed to return plaintiff's calls with regard to  
18 getting back to work. She then approached defendant's HR department directly, and against  
19 explained that she was authorized to return to work, and the nature of her work restrictions.

20 14. Defendant made no effort to get plaintiff back to work. Instead, the company  
21 summarily informed plaintiff that she could not return to work unless she either had no  
22 restrictions at all and/or could work at least 20 hours per week.

23 15. From January 2006 to the present, plaintiff has continued to seek accommodations  
24 that would allow her to return to work. Defendants have continued to refuse to offer plaintiff  
25 reasonable accommodations that would allow her to return to work, all without having first  
26 engaged in the interactive process in good faith with plaintiff.

27 16. Govt. Code § 12940(n) makes it illegal "for an employer. . . to fail to engage in a  
28 timely, good faith interactive process with the employee or applicant to determine effective

1 reasonable accommodation by an employee or applicant with a known physical or mental  
2 disability or known medical condition."

3 17. By refusing to given any consideration whatsoever to plaintiff's request for  
4 accommodation, defendants violated their obligation to engage in the interactive process,  
5 contrary to Govt. Code § 12940(n).

6 18. Plaintiff filed a timely charge of disability discrimination with the California  
7 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a  
8 respondent in the body of said complaint. Plaintiff has received a right to sue notice for this  
9 charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the  
10 date she received her "right to sue" letter from the DFEH, and has therefore properly exhausted  
11 her administrative remedies.

12 19. As a direct and proximate result of the wrongful acts of defendants, and each of  
13 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
14 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
15 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
16 compensatory damages according to proof.

17 20. As a further direct and proximate result of the wrongful acts of defendants  
18 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
19 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such  
20 attorneys' fees and costs under Govt. Code § 12965(b).

21 21. The outrageous conduct of defendants described herein was done with malice,  
22 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design  
23 and purpose of injuring her. Defendants, through their officers, managing agents and/or  
24 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
25 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
26 according to proof at trial.

**SECOND CAUSE OF ACTION**

**Failure to Accommodate**

**(Against all Defendants)**

22. Plaintiff incorporates by reference paragraphs 1-21 above, as though fully set forth herein.

23. Pursuant to Govt. Code § 12940(m), defendants had a duty to accommodate Plaintiff's ankle condition. Despite actual knowledge of plaintiff's disability, and multiple requests for accommodation, defendants refused to offer any reasonable accommodations to allow plaintiff to return to work. In doing the foregoing acts, defendants failed to accommodate plaintiff's disability, in violation of Govt. Code § 12940(m).

24. Plaintiff filed a timely charge of disability discrimination with the California Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a respondent in the body of said complaint. Plaintiff has received a right to sue notice for this charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the date she received her "right to sue" letter from the DFEH, and has therefore properly exhausted her administrative remedies.

25. As a direct and proximate result of the wrongful acts of defendants, and each of them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress, including without limitation, depression, hopelessness, embarrassment, humiliation, degradation, loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and compensatory damages according to proof.

26. As a further direct and proximate result of the wrongful acts of defendants described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such attorneys' fees and costs under Govt. Code § 12965(b).

27. The outrageous conduct of defendants described herein was done with malice, fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design and purpose of injuring her. Defendants, through their officers, managing agents and/or

1 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
2 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
3 according to proof at trial.

4 **THIRD CAUSE OF ACTION**

5 **Employment Discrimination – Disability**

6 (Against all Defendants)

7 28. Plaintiff incorporates by reference paragraphs 1-27 above, as though fully set  
8 forth herein.

9 29. The above-described conduct, including but not limited to defendant's refusal to  
10 allow plaintiff to return to work, were adverse and discriminatory actions taken based on  
11 plaintiff's physical disabilities.

12 30. Plaintiff filed a timely charge of disability discrimination with the California  
13 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a  
14 respondent in the body of said complaint. Plaintiff has received a right to sue notice for this  
15 charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the  
16 date she received her "right to sue" letter from the DFEH, and has therefore properly exhausted  
17 her administrative remedies.

18 31. As a direct and proximate result of the wrongful actions of defendants, plaintiff  
19 has been harmed in that she has suffered actual, consequential and incidental financial losses,  
20 including without limitation, loss of earnings and other employment benefits and the intangible  
21 loss of employment-related opportunities for growth in her field and damage to her professional  
22 reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as  
23 damages together with prejudgment interest pursuant to Civil Code § 3287 and or Civil Code §  
24 3288 and/or any other provision of law providing for prejudgment interest.

25 32. As a direct and proximate result of the wrongful acts of defendants, and each of  
26 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
27 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
28



1 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
2 compensatory damages according to proof.

3 33. As a further direct and proximate result of the wrongful acts of defendants  
4 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
5 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such  
6 attorneys' fees and costs under Govt. Code § 12965(b).

7 34. The outrageous conduct of defendants described herein was done with malice,  
8 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design  
9 and purpose of injuring her. Defendants, through their officers, managing agents and/or  
10 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
11 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
12 according to proof at trial.

13 WHEREFORE, Plaintiff requests the following judgment and relief:

- 14 1. For compensatory and general damages in an amount according to proof;  
15 2. For punitive damages;  
16 3. For statutory attorneys' fees and costs;  
17 4. For pre-judgment and post-judgment interest according to any applicable  
18 provision of law, according to proof;  
19 5. For costs of suit; and  
20 6. For such other and further relief as the court deems proper.

21  
22 DATED: April 23, 2007

LAW OFFICES OF MAUREEN E. MCFADDEN

23  
24 By:   
25 Maureen E. McFadden

26 Attorney for Plaintiff  
27 MEGAN KELLY  
28



ATTORNEY OR PARTY WITHOUT ATTORNEY <i>Please Print Name, State Bar Number, and address:</i> <b>Maureen E. McFadden, EBN 203781</b> <b>LAW OFFICES OF MAUREEN E. MCFADDEN</b> 319 Bancroft Way Berkeley, CA 94710 TELEPHONE NO: (510) 845-5203 FAX NO: (510) 868-0976 ATTORNEY FOR: <b>Plaintiff Megan Kelly</b>		FOR COURT USE ONLY  <b>ENDORSED FILED ALAMEDA COUNTY</b>  <b>APR 23 2007</b>  CLERK OF THE SUPERIOR COURT By Esther Colaman, Deputy
SUPERIOR COURT OF CALIFORNIA, County of Alameda STREET ADDRESS: <b>1225 Fallon Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Oakland, CA 94612</b> BRANCH NAME: <b>Rene C. Davidson Courthouse</b>		
CASE NAME: <b>Megan Kelly v. Applera Corporation et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: <b>RG 07322056</b>		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) <b>Non-PIP/DWD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (10) <input type="checkbox"/> Intellectual property (16) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/DWD tort (36) <b>Employment</b> <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (39) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Will of mandate (02) <input type="checkbox"/> Other judicial review (30)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (05) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Tecore tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):  
 a. ☒ monetary    b. ☐ nonmonetary, declaratory or injunctive relief    c. ☒ punitive

4. Number of causes of action (specify): **3**

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **April 23, 2007**  
 Maureen E. McFadden

(TYPE OR PRINT NAME) <b>Maureen E. McFadden</b>	SIGNATURE OF PARTY OR ATTORNEY FOR PARTY: 
<b>NOTICE</b> • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a complex case, this cover sheet will be used for statistical purposes only.	
Form Adopted for Mandatory Use Judicial Council of California CM-010 (Rev. January 1, 2007)	

## CIVIL CASE COVER SHEET

 Judicial Council of California  
 www.judicialcouncil.org

 Cal. Rules of Court, rules 3.220, 3.400-3.403  
 Standards of Judicial Administration, § 18  
 www.courtinfo.ca.gov

BY FAX

Exhibit 1-8

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Applers Corporation and DOES 1-20, inclusive

## YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Megan Kelly

5174-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENDORSED  
FILED  
ALAMEDA COUNTY

APR 23 2007

CLERK OF THE SUPERIOR COURT  
By Esther Coleman, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.legalaidcalifornia.org](http://www.legalaidcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto al demandante que procesa su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de solicitud de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.legalaidcalifornia.org](http://www.legalaidcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda County Superior Court, 1225 Fallon Street, Oakland, CA  
Rene C. Davidson Courthouse

CASE NUMBER  
(Número del Caso):

RG07322056

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Maureen E. McFadden, Law Offices of Maureen E. McFadden, Ph (510) 843-5203, Fax (510) 868-0976, 819  
Bancroft Way, Berkeley, CA 94710

DATE  
(Fecha): APR 20 2007

FAT S. SWEETEN

Clerk, by  
(Secretario)

Esther Coleman

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- |  |   |
|--|---|
| under: <input type="checkbox"/> CCP 415.10 (corporation)         | <input type="checkbox"/> CCP 415.80 (minor)             |
| <input type="checkbox"/> CCP 415.20 (defunct corporation)        | <input type="checkbox"/> CCP 415.70 (conservatee)       |
| <input type="checkbox"/> CCP 415.40 (association or partnership) | <input type="checkbox"/> CCP 415.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

4. ☐ by personal delivery on (date):

(SEAL)

Form Adopted/Courts/Standard/Lit  
Judicial Council of California  
5174-100 (Rev. January 7, 2007)

SUMMONS

Code of Civil Procedure §§ 415.20, 415.40

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Exhibit 1-9

# EXHIBIT 2

1 JOHN M. SKONBERG, Bar No. 069409  
2 TYLER M. PATKAU, Bar No. 146305  
3 MICHAEL G. PEDHIRNEY, Bar No. 233164  
4 LITTLER MENDELSON  
5 A Professional Corporation  
6 650 California Street  
7 20th Floor  
8 San Francisco, CA 94108.2693  
9 Telephone: 415.433.1940

10 Attorneys for Defendant  
11 APPLERA CORPORATION

ENDORSED  
FILED  
ALAMEDA COUNTY

JUN 07 2007

CLERK OF THE SUPERIOR COURT  
By Esther Goleman, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 MEGAN KELLY,

15 Plaintiff,

16 v.

17 APPLERA CORPORATION and DOES 1-  
18 20, inclusive,

19 Defendants.

Case No. RG07-322056

BY FAX

ANSWER BY DEFENDANT APPLERA  
CORPORATION TO PLAINTIFF'S  
UNVERIFIED COMPLAINT

Complaint Filed: April 23, 2007

20 Defendant APPLERA CORPORATION ("Applera"), answers the unverified  
21 Complaint ("Complaint") filed by Plaintiff MEGAN KELLY ("Plaintiff") as follows:

22 GENERAL DENIAL

23 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Applera  
24 answers the Complaint filed by Plaintiff by generally denying each and every allegation contained  
25 therein, by denying that Plaintiff has been damaged in any amount, or at all, or has sustained any  
26 damages as a result of the conduct alleged therein.

27 AFFIRMATIVE DEFENSES

28 Additionally, without assuming the burden of proof on any matters that would  
otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, Applera asserts the  
following separate and distinct affirmative defenses to Plaintiff's unverified Complaint.

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

Neither the Complaint, nor any cause of action set forth therein, states facts sufficient to constitute a cause of action against Applera.

**SECOND AFFIRMATIVE DEFENSE**

(Failure to State a Claim Against Doe Defendants)

The Complaint, and each and every cause of action thereof, whether considered singly or in combination, fails to state facts sufficient to constitute a cause of action against Doe Defendants.

**THIRD AFFIRMATIVE DEFENSE**

(Statute of Limitations)

Plaintiff's claims are barred by the applicable statute of limitations, including but not limited to California Government Code sections 12960 and 12965(b).

**FOURTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust Administrative Remedies)

Plaintiff failed to comply with applicable procedural and administrative prerequisites including timely charge filing requirements and the exhaustion of all administrative remedies.

**FIFTH AFFIRMATIVE DEFENSE**

(Legitimate, Non-Discriminatory Personnel Actions)

The employment actions complained of by Plaintiff were based on legitimate, nondiscriminatory reasons.

**SIXTH AFFIRMATIVE DEFENSE**

(No Knowledge Of Unlawful Conduct)

Applera had no knowledge of any discriminatory or otherwise unlawful behavior by any of its employees, if any, agents, or representatives.

**SEVENTH AFFIRMATIVE DEFENSE**

(Exercise of Reasonable Care to Prevent Discrimination)

Applera exercised reasonable care to prevent and promptly correct any discriminatory or other unlawful behavior.

**EIGHTH AFFIRMATIVE DEFENSE**

(Conduct Outside the Course and Scope of Employment)

To the extent employees engaged in any discriminatory or otherwise unlawful behavior, the alleged acts were committed outside the course and scope of employment.

**NINTH AFFIRMATIVE DEFENSE**

(Avoidable Consequences Doctrine)

Plaintiff's claims, in whole or in part, are barred, or any recovery should be reduced, pursuant to the avoidable consequences doctrine, because Applera took reasonable steps to prevent and correct workplace discrimination, Plaintiff unreasonably failed to use the preventative and corrective opportunities provided to employees by Applera, and reasonable use of the Applera's procedures would have prevented at least some of the harm that the Plaintiff allegedly suffered.

**TENTH AFFIRMATIVE DEFENSE**

(No Protected Disability)

Plaintiff was not a qualified individual with a disability in that Plaintiff could not perform the essential functions of the position with or without reasonable accommodation.

**ELEVENTH AFFIRMATIVE DEFENSE**

(No Reasonable Accommodation)

Assuming that Plaintiff made a request for reasonable accommodation, Applera alleges that Plaintiff's requested accommodation is unreasonable.

**TWELFTH AFFIRMATIVE DEFENSE**

(Undue Hardship)

Assuming that Plaintiff made a request for reasonable accommodation, Applera alleges that Plaintiff's requested accommodation imposes an undue hardship.



**THIRTEENTH AFFIRMATIVE DEFENSE**

(Direct Threat)

Employment of Plaintiff in the position in question would have posed a direct threat to the health or safety of Plaintiff.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Failure to Cooperate in Interactive Process)

Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because of her failure to cooperative in good faith in the interactive process.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Disruption of Interactive Process)

Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because of Plaintiff's direct or indirect responsibility for any alleged breakdown in, or disruption of, the interactive process.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(No Harm Caused by Alleged Failure to Engage in Interactive Process)

Plaintiff suffered no harm or other prejudice as a result of Applera's alleged failure to initiate or properly conduct the interactive process because, at all material times, a reasonable accommodation of Plaintiff's alleged disability was not possible; thus, Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part, or fail as a matter of law.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(After-Acquired Evidence)

To the extent during the course of this litigation it acquires any evidence of Plaintiff's wrongdoing, such after-acquired evidence bars Plaintiff's claims of liability or damages or reduces such claims as provided by law.



**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Workers' Compensation Preemption)**

Insofar as Plaintiff alleges she suffered from any physical or emotional injury as a result of Applera's conduct, her claim is preempted by the California Workers' Compensation statutes, including California Labor Code section 3601, *et seq.*, inasmuch as any compensable alleged injury to Plaintiff occurred at a time when she was subject to California Workers' Compensation provisions; at the time of such alleged injury Plaintiff was performing services growing out of and incidental to her employment and was acting within the course and scope of her employment; the alleged injury was proximately caused by her employment; and Applera was providing workers compensation coverage without any charge to the employee.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Plaintiff's Conduct)**

The injuries and damages alleged in the Complaint were caused by and/or were contributed to by Plaintiff's own acts or failure to act, and that Plaintiff's recovery, if any, should be reduced by an amount proportionate to the amount by which said acts caused or contributed to said alleged injuries or damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Set-Offs)**

If Plaintiff is judged to be entitled to any recovery based on her Complaint, Applera is entitled to a set-off for each of the following, respectively and separately: damages paid to Plaintiff by order of the California Workers' Compensation Appeals Board, on related claims, if any; state disability payments to Plaintiff for related claims, if any; federal Social Security benefits paid to Plaintiff for related reasons, if any; and state unemployment compensation paid to Plaintiff for related reasons, if any.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Any award to Plaintiff must be reduced on the basis that Plaintiff failed and refused to make reasonable efforts to mitigate, minimize or avoid any alleged losses or damages.

5.

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT**

**Case No. RG07-322056**

Exhibit 2-5

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Estoppel, Waiver, Unclean Hands and/or Laches)

Plaintiff's claims are barred by the equitable doctrines of estoppel, waiver, unclean hands and/or laches.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(Failure to State Grounds for Punitive Damages)

Plaintiff has failed to state facts sufficient to constitute a claim for punitive damages.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

(Alternative Concurrent Sources of Emotional Distress)

To the extent Plaintiff suffered any symptoms of mental or emotional distress or injury, it was the result of a pre-existing psychological disorder or alternative concurrent cause(s), and not the result of any act or omission by Applera.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

(Failure to State Grounds for Attorneys' Fees and Costs)

Plaintiff has failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be granted.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

(Unconstitutionality of Punitive Damages)

The United States and California Constitutions bar any claim by Plaintiffs for punitive damages.

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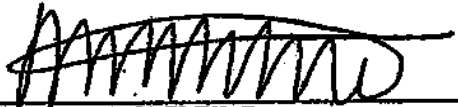
///

6.

WHEREFORE, Applera prays:

1. That Plaintiff takes nothing by her Complaint and that the Complaint be dismissed in its entirety, with prejudice;
2. That Applera be awarded full judgment in this action;
3. That Applera be awarded costs of suit and attorneys' fees incurred herein; and
4. That Applera be awarded such other and further relief as the Court deems just and proper.

Dated: June 7, 2007

  
JOHN M. SKONBERG  
TYLER M. PAETKAU  
MICHAEL G. PEDHIRNEY  
LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendant  
APPLERA CORPORATION

Firmwide: 82561145.1 008292.1051

7.

Exhibit 2-7

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUN 07 2007**

CLERK OF THE SUPERIOR COURT  
By Esther Goleman, Deputy

JOHN M. SKONBERG, Bar No. 069409  
TYLER M. PAETKAU, Bar No. 146305  
MICHAEL G. PEDHIRNEY, Bar No. 233164  
LITTLER MENDELSON  
A Professional Corporation  
650 California Street  
20th Floor  
San Francisco, CA 94108.2693  
Telephone: 415.433.1940

Attorneys for Defendant  
APPLERA CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

MEGAN KELLY,

Plaintiff,

v.

APPLERA CORPORATION and DOES 1-  
20, inclusive,

Defendants.

Case No. RG07-322056

PROOF OF SERVICE

**BY FAX**

Complaint Filed: April 23, 2007

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On June 7, 2007, I served the within document(s):

**> ANSWER BY DEFENDANT APPLERA CORPORATION  
TO PLAINTIFF'S UNVERIFIED COMPLAINT**



by facsimile transmission on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. The names and facsimile numbers of the person(s) served are as set forth below.

LITTLER MENDELSON  
A Professional Corporation  
650 California Street  
20th Floor  
San Francisco, CA 94108.2693  
415.433.1940

PROOF OF SERVICE CASE RG07322056

Exhibit 2-8

10665084.01 - 07/2007 12:06:50 PM



2 by placing a true copy of the document(s) listed above for collection and mailing  
3 following the firm's ordinary business practice in a sealed envelope with postage  
4 thereon fully prepaid for deposit in the United States mail at San Francisco,  
5 California addressed as set forth below.



7 by depositing a true copy of the same enclosed in a sealed envelope, with delivery  
8 fees provided for, in an overnight delivery service pick up box or office designated  
9 for overnight delivery, and addressed as set forth below.

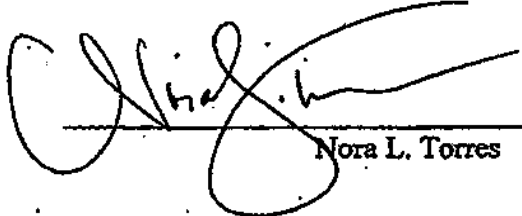


11 by personally delivering a copy of the document(s) listed above to the person(s) at  
12 the address(es) set forth below.

13  
14 Maureen E. McFadden, Esq.  
15 Law Offices of Maureen E. McFadden  
16 819 Bancroft Way  
17 Berkeley, CA 94710  
18 Fax: (510) 868-0976

19 I am readily familiar with the firm's practice of collection and processing  
20 correspondence for mailing and for shipping via overnight delivery service. Under that practice it  
21 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,  
22 deposited in an overnight delivery service pick-up box or office on the same day with postage or fees  
23 thereon fully prepaid in the ordinary course of business.

24 I declare under penalty of perjury under the laws of the State of California that the  
25 above is true and correct. Executed on June 7, 2007, at San Francisco, California.

26  
27   
28 Nora L. Torres

Firmwide: 82421970, 1 008292, 1051

# EXHIBIT 3

## LAW OFFICES OF MAUREEN E. MCFADDEN

819 Bancroft Way  
Berkeley, CA 94710  
www.mcfaddenlaw.net

December 22, 2006

Ph (510) 845-5203  
Fax (510) 868-0976  
maureen@mcfaddenlaw.net

### VIA FEDERAL EXPRESS

Administrator/HR Client Services  
Applied Biosystems/Applera Corporation  
850 Lincoln Centre Drive  
Foster City, CA 94404

Re: *Megan Kelly/Applied Biosystems*

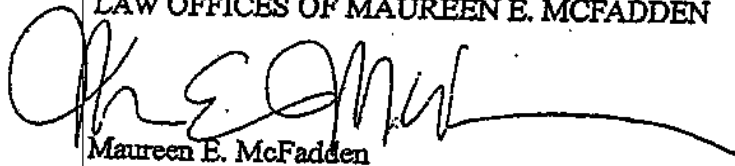
To Whom It May Concern:

Please be advised that this office represents Megan Kelly as to her employment-related claims against Applied Biosystems, and direct all future communications to my attention. Enclosed is a request for Ms. Kelly's personnel file and related documents. Please forward these documents to me at your earliest opportunity.

Our demand letter will follow shortly.

Very Truly Yours,

LAW OFFICES OF MAUREEN E. MCFADDEN



Maureen E. McFadden

Encl.

cc. Client

KELLY 0190

*Exhibit 3-1*



Dec 21 06 09:03p

Allyna

510 845 7636

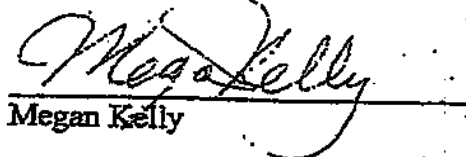
P.3

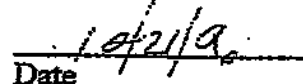
Pursuant to Labor Code § § 432 and 1198.5, I hereby request a copy of the following documents:

- My personnel file
- Any other documents pertaining to my performance.
- Any other documents I signed at any time relating to my employment with Applied Biosystems.

Please direct these documents to the attention of my attorney:

MAUREEN E. McFADDEN  
LAW OFFICES OF MAUREEN E. McFADDEN  
819 Bancroft Way  
Berkeley, CA 94710  
Ph (510) 845-5203  
Fax (510) 868-0976

  
Megan Kelly

  
Date

KELLY 0191

Exhibit 3-2

# EXHIBIT 4

Feb 14 07 11:53a

Rlyna

510 845 7636

P. 1



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

February 13, 2007

To Whom It May Concern:

Megan Kelly has been under my care regarding her bilateral wrist injuries and is able to return to work on 2/15/07. She will need to work with her wrist splints on and will need to avoid heavy lifting of 5 lbs or more.

Remarks: Bilateral TFCC tears, wrists.

Sincerely,

 PA-C  
Josef Maier MSPA-C.

Exhibit 4-1

# EXHIBIT 5

## LAW OFFICES OF MAUREEN E. MCFADDEN

819 Bancroft Way  
Berkeley, CA 94710  
www.mcfaddenlaw.net

Ph (510) 845-5203  
Fax (510) 868-0976  
maureen@mcfaddenlaw.net

February 23, 2007

### VIA FEDERAL EXPRESS

Veronica Jones  
Senior Manager, Employee Relations  
Applied Biosystems  
850 Lincoln Centre Drive  
Foster City, CA 94404

Re: Megan Kelly v. Applied Biosystems

Dear Ms. Jones:

This letter is written pursuant to Evidence Code § 1152, in an effort to settle Megan Kelly's employment-related claims against Applied Biosystems.

Ms. Kelly commenced employment as an Associate Production Chemist with Applied Biosystems in February 2002. Her performance was excellent. She received strong reviews, and agreeably worked the long hours often demanded. Throughout her time with Applied Biosystems, Ms. Kelly was a valued employee.

On July 6, 2004, Ms. Kelly tripped and sprained her ankle. After a short medical leave and a course of physical therapy, Ms. Kelly was released to return to work in September 2004. As part of her release to work, Ms. Kelly was supposed to be able to sit down whenever she needed to. However, Applied Biosystems was extraordinarily busy during this timeframe, and short-handed. Ms. Kelly, who generally worked alone, was pressured to get orders done quickly. As a result, she was seldom able to sit down.

On September 21, 2004, while moving about extensively and attending to multiple tasks at the same time, Ms. Kelly re-injured her right ankle. Emergency room physicians diagnosed Ms. Kelly with another ankle sprain, and she was again taken off of work. The re-injury was quite serious, in that Ms. Kelly's ankle did not heal well, and she continued to experience serious instability in her right ankle. Several subsequent falls have further aggravated the injury, and Ms. Kelly has also sustained wrist injuries in those falls.

Ms. Kelly has been under the care of numerous physicians while out on leave from Applied Biosystems. Throughout her leave, Ms. Kelly regularly left telephone messages with her immediate supervisor, Jonathon Laosiri, regarding her status and the progress of her recovery. Ms. Kelly also faxed doctor's notes to Applied Biosystems, to Mr. Laosiri's attention. Neither Mr. Laosiri nor anyone else from Applied Biosystems ever responded to Ms. Kelly's telephone messages, or communicated with her in any manner regarding her continued leave.

In January 2006, Ms. Kelly's physicians determined that she was well enough to return to work, albeit with restrictions as to the number of hours she could work, a restriction on lifting any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes. Ms. Kelly provided

Exhibit 5-1

February 23, 2007

Applied Biosystems with a doctor's note authorizing her to work, and specifying these restrictions. Ms. Kelly's supervisor, Jonathon Laosiri, continued to fail to respond to her. Ms. Kelly then called Applied Biosystem's HR department directly, and again explained that she was authorized to return back to work, and the nature of her work restrictions. Applied Biosystems made no effort to get Ms. Kelly back to work. Instead, the company summarily informed Ms. Kelly that she could not return to work unless she either had no restrictions at all and/or could work at least 20 hours per week.

Applied Biosystem's above-described conduct is in clear violation of California law. Ms. Kelly's ankle condition constitutes a "physical disability" within the meaning of the Fair Employment and Housing Act, in that it is a physiological condition that limits (i.e. makes more difficult) her achievement of the major life activity of work. Govt. Code § 12926(k). As such, Ms. Kelly is entitled to all the protections afforded under the law for individuals with disabilities. In particular, when an employee with a known physical disability requests accommodation, the employer is then obligated to engage in a timely good faith "interactive process." Govt. Code § 12940(n). Ms. Kelly's presentation of the January 2006 doctor's note to Applied Biosystems triggered its obligation to engage in the interactive process with her.

The "interactive process" refers to the back and forth dialogue and exchange of information between an employer and employee that is needed to determine what type of accommodation will aid an employee. As one court has explained of the interactive process: "Employers should meet with the employee who requests accommodation, request information about the condition and what limitations the employee has, ask what he or she specifically wants, and offer and discuss available alternatives when the request is burdensome." Taylor v. Phoenixville School Dist., 184 F.3d at 317. Because Applied Biosystems summarily dismissed Ms. Kelly's January 2006 request for accommodation, without making any effort whatsoever to analyze her work restrictions, or to explore options that would have enabled her to return to work, it will be held liable on a claim for failure to engage in the interactive process. See Claudio v. Regents of the University of California (2005) 134 Cal.App.4<sup>th</sup> 224.

Applied Biosystems will also be held liable on a separate claim for failure to accommodate, pursuant to Govt. Code § 12940(m). Employers have an affirmative duty to accommodate disabled workers. Ms. Kelly was not requesting anything extraordinary. The Fair Employment and Housing Act specifically identifies "offering part-time or modified work schedules" as a potential reasonable accommodation. Govt. Code § 12926(a); 2 Cal. Code Regs. § 7293.9(a). Allowing an employee to sit down and/or take breaks more often than is typical is also a well-accepted and common reasonable accommodation. If this matter is litigated, we are confident the evidence will show that Applied Biosystems could have accommodated Ms. Kelly's disability.

Ms. Kelly took pride in her job with Applied Biosystems, and was crushed at the company's unwillingness to assist in getting her back to work. Applied Biosystem's conduct is particularly despicable in light of the fact that Ms. Kelly's October 2004 re-injury was a workplace accident, which may have been caused in part by the company's inadequate accommodation of her original July 2004 sprained ankle. Ms. Kelly has experienced significant emotional distress arising out of Applied Biosystem's conduct. She has also sustained a substantial economic loss, including more than a year's work of salary and associated benefits.

exhibit 5-2

- 3 -

February 23, 2007

Applied Biosystem's outrageous conduct towards Ms. Kelly may also warrant punitive damages. A sampling of recent disability discrimination verdicts demonstrates that juries take these claims seriously, and don't hesitate to award large emotional distress and punitive damages awards:

<u>Case</u>	<u>Economic Damages</u>	<u>Emotional Distress</u>	<u>Punitives</u>	<u>Total Jury Verdict</u>
Martin v. Arrow Electr.(2006)	\$1M		\$500K	\$1.5M
Carr v. Wash. Mutual (2006)	\$118K	\$682K		\$800K
McGee v. Tucoemas (2005)	\$542K	\$1.5M	\$1.2M	\$3.2M
Welch v. Anaheim (2005)	\$215K	\$5M		\$5.2M
Roby v. McKesson (2004)	\$1.3M	\$2.7M	\$15M	\$19M
Wrynski v. Agilent (2004)	\$850K	\$117K	\$3.8M	\$4.8M
Green v. State (2003)	\$597K	\$2M		\$2.6M
McMurray v. Burbank (2003)	\$997K	\$537K		\$1.5M
Tousignant v. San Bernardino (2002)	\$445K	\$1M		\$1.4M

Ms. Kelly wants to move on with her life, and will agree to settle all past disability and related claims against Applied Biosystems for \$75,000. She also wants her job back. Ms. Kelly hereby demands that Applied Biosystems promptly engage in the interactive process with her, and offer such reasonable accommodations as will allow her to return to work as quickly as possible. Towards that end, Ms. Kelly's current work restrictions are enclosed with this letter.

Please provide a response within one week of the date of this letter. If we do not hear from you by that time, we will commence litigation.

Very Truly Yours,

LAW OFFICES OF MAUREEN E. MCFADDEN



Maureen E. McFadden

Encl. Current work restrictions  
DFEH Complaint and right to sue letter

Exhibit 5-3



# EXHIBIT 6

**Applera**  
Corporation

301 Merritt 7  
Norwalk, CT 06851

March 6, 2007

**VIA E-MAIL AND U.S. MAIL**

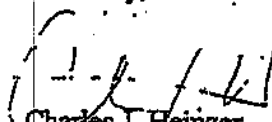
Maureen E. McFadden, Esq.  
819 Bancroft Way  
Berkeley, CA 94710

**Re: Megan Kelly**

Dear Ms. McFadden:

Please direct any further correspondence regarding Ms. Kelly to my attention.  
We are open to discussing this matter in order to reach a solution.

Sincerely,

  
Charles J. Heinzer  
Senior Director, Attorney

cc: V. Jones

**KELLY 0150**

D:\WD 021 - 01012007-03312007\1-McFadden-Kelly.doc

Exhibit 6-1

T (203) 840-2000  
www.applera.com

**AB** Applied  
Biosystems

**CELERA**

# EXHIBIT 7

**Applera**  
Corporation  
301 Merritt 7  
Norwalk, CT 06851

March 28, 2007

**VIA E-MAIL AND U.S. MAIL**

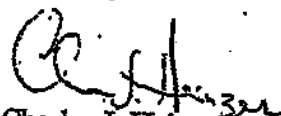
Maureen E. McFadden, Esq.  
819 Bancroft Way  
Berkeley, CA 94710

**Re: Megan Kelly**

Dear Ms. McFadden:

Applera's Human Resources Department recently attempted to contact Ms. Kelly to set up a meeting regarding her return to work. The Company has not heard from her. May I ask you to contact your client and let us know when she desires to discuss her return.

Sincerely,



Charles J. Heinzer  
Senior Director, Attorney

cc: V. Jones

KELLY 0147

Exhibit 7-1

DAWD 021 - 01012007-03312007L-McFadden-Kelly-3-28-2007.doc

T (203) 840-2000  
www.applera.com

# EXHIBIT 8

**LAW OFFICES OF MAUREEN E. MCFADDEN**  
**819 Bancroft Way, Berkeley, CA 94710**

To: Veronica Jones

Fax: (650) 638-6705

Phone: \_\_\_\_\_

From: Maureen E. McFadden

Fax: (510) 868-0976

Phone: (510) 845-5203

Date: 5/18/2007

Subject: Kelly/Applied Biosystems

Please see attached note with work restrictions for Megan Kelly.

KELLY 0142

Exhibit 8-1



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 Mcgee Ave  
Apt 2  
Berkeley, CA 94703

May 9, 2007

MRN# 15221641

To Whom It May Concern:

My patient, Megan Kelly, is currently under my care for her wrists. She was seen and evaluated in the office today, May 9, 2007. She may return to work with restrictions. She should not lift more than 2 lbs with either hand. She should avoid repetitive movements with either hand/wrist for prolonged periods, no longer than 15 minutes at a time. She may file and pour liquids with these limitations.

If you have any questions, please feel free to call my office at (510) 490-1222.

Sincerely,

*Barry Rose, MD*

Barry Rose, MD  
Orthopedic Surgeon  
Fremont Clinic

KELLY 0143

Exhibit 2



# EXHIBIT 9

**LAW OFFICES OF MAUREEN E. MCFADDEN**  
**819 Bancroft Way, Berkeley, CA 94710**

To: Veronica Jones	From: Maureen E. McFadden
Fax: (650) 638-6705	Fax: (510) 868-0976
Phone:	Phone: (510) 845-5203
Date: 5/3/2007	
Subject: Kelly/Applied Biosystems	

Please see attached note with work restrictions for Megan Kelly.

KELLY 0145

Exhibit 9 -1



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

**Fremont Center**

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 Mcgee Ave  
Apt 2  
Berkeley, CA 94703

April 25, 2007

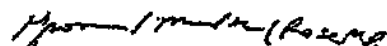
MRN# 15221641

To Whom It May Concern:

My patient, Megan Kelly, is currently under my care for her wrists. She may return to work with restrictions. She should not lift more than 2 lbs with either hand. She should avoid repetitive movements with either hand/wrist for prolonged periods, no longer than 15 minutes at a time. She may file and pour liquids with these limitations.

If you have any questions, please feel free to call my office at (510) 490-1222.

Sincerely,

  
Barry Rose, MD  
Orthopedic Surgeon  
Fremont Clinic

KELLY 0146

Exhibit 9-2

# EXHIBIT 10

**LAW OFFICES OF MAUREEN E. MCFADDEN**  
**819 Bancroft Way, Berkeley, CA 94710**

To:	Veronica Jones	From:	Maureen E. McFadden
Fax:	(650) 638-6705	Fax:	(510) 868-0976
Phone:		Phone:	(510) 845-5203
Date:	5/29/2007		
Subject:	Kelly/Applied Biosystems		

Please see attached note with work restrictions for Megan Kelly.

KELLY 0139

Exhibit /a-1

# EXHIBIT 11

**LAW OFFICES OF MAUREEN E. MCFADDEN**  
**819 Bancroft Way, Berkeley, CA 94710**

To: Veronica Jones

Fax: (650) 638-6705

Phone:

From: Maureen E. McFadden

Fax: (510) 868-0976

Phone: (510) 845-5203

Date: 5/30/2007

Subject: Kelly/Applied Biosystems

Please see attached note with work restrictions for Megan Kelly.

KELLY 0137

Exhibit // -1



*Palo Alto Medical  
Foundation*

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

May 24, 2007

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

To Whom It May Concern:

Megan Kelly was seen and evaluated in clinic today. She may return to part-time work with limited repetitive activities.

If you have any questions, please do not hesitate to call my office at (510) 490-1222.

Sincerely,

Barry A. Rose, M.D.  
Palo Alto Medical Foundation  
Fremont Center  
3200 Kearney Street  
Fremont, CA 94538

KELLY 0140

Exhibit 11-2



# EXHIBIT 12

**LAW OFFICES OF MAUREEN E. MCFADDEN**  
**819 Bancroft Way, Berkeley, CA 94710**

To:	Veronica Jones	From:	Maureen E. McFadden
Fax:	(650) 638-6705	Fax:	(510) 868-0976
Phone:		Phone:	(510) 845-5203
<hr/>			
Date:	6/1/2007		
Subject:	Kelly/Applied Biosystems		

Please see attached note with work restrictions for Megan Kelly.

KELLY 0133

Exhibit 12-1



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

**Fremont Center**

**3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
www.pamf.org**

Megan Kelly  
2009 Midgee Ave  
Apt 2  
Berkeley, CA 94703

May 31, 2007

MRN# 15221641

To Whom It May Concern:

Megan Kelly was seen and evaluated in clinic today. She may return to part-time work, which is 20 hours a week, with limited repetitive activities.

If you have any questions, please do not hesitate to call my office at (510) 490-1222.

Sincerely,

*Barry A. Rose, M.D.*

Barry A. Rose, M.D.  
Palo Alto Medical Foundation  
Fremont Center

KELLY 0134

Exhibit 12-2

# EXHIBIT 13



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

**Fremont Center**

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

April 25, 2007

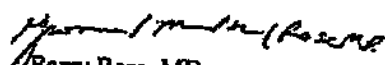
MRN# 15221641

To Whom It May Concern:

My patient, Megan Kelly, is currently under my care for her wrists. She may return to work with restrictions. She should not lift more than 2 lbs with either hand. She should avoid repetitive movements with either hand/wrist for prolonged periods, no longer than 15 minutes at a time. She may file and pour liquids with these limitations.

If you have any questions, please feel free to call my office at (510) 490-1222.

Sincerely,

  
Barry Rose, MD  
Orthopedic Surgeon  
Fremont Clinic

KELLY 0146

Exhibit B-1

# EXHIBIT 14



Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

May 9, 2007

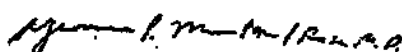
MRN# 15221641

To Whom It May Concern:

My patient, Megan Kelly, is currently under my care for her wrists. She was seen and evaluated in the office today, May 9, 2007. She may return to work with restrictions. She should not lift more than 2 lbs with either hand. She should avoid repetitive movements with either hand/wrist for prolonged periods, no longer than 15 minutes at a time. She may file and pour liquids with these limitations.

If you have any questions, please feel free to call my office at (510) 490-1222.

Sincerely,



Barry Rose, MD  
Orthopedic Surgeon  
Fremont Clinic

KELLY 0143

Exhibit 14-1

# EXHIBIT 15





*Palo Alto Medical  
Foundation*

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

May 24, 2007

Megan Kelly  
2009 McGehee Ave  
Apt 2  
Berkeley, CA 94703

To Whom It May Concern:

Megan Kelly was seen and evaluated in clinic today. She may return to part-time work with limited repetitive activities.

If you have any questions, please do not hesitate to call my office at (510) 490-1222.

Sincerely,

Barry A. Rose, M.D.  
Palo Alto Medical Foundation  
Fremont Center  
3200 Kearney Street  
Fremont, CA 94538

KELLY 0140

Exhibit 15-1

# EXHIBIT 16

# PACIFIC

Orthopaedic & Sports Rehabilitation

5/25/07

To Whom It May Concern:

Megan Kelly is currently receiving physical therapy care s/p arthroscopic surgery for right wrist TFCC tear. She presents with pain, weakness, decreased ROM and decreased functional use of her right hand as a result. Megan wears a wrist splint during the day for activities of daily living to preserve her recovery and prevent injury. We recommend the following work restrictions to continue promoting her full recovery.

Regarding her job description:

1. Regularly, and as needed, assemble MicroRNA boxes, requiring bending, stooping, and lifting.

*Megan is limited to only 5 pounds of weight maximally at this time and must take breaks to rest the right wrist/hand every 20 minutes.*

2. Regularly inspect CORE packaging, including reconstitution of vibrating plates.

*Megan may not subject the wrist and hand to repeated pressure and vibration; should avoid reconstituting the vibration plates.*

3. Redline SOPs using standard writing implements and or personal computer.

*Megan must take a 10 minute break from typing, after 20 minutes, for rest or change of task.*

4. Regularly assist operators with total preventive maintenance, which requires wiping down instruments and workbenches with wipes; returning tools to their designated location; and performing visual checks on instruments.

*Megan needs to wear her wrist brace at all times while working and must avoid extreme positions of wrist flexion or extension during this task.*

5. Routinely perform data collection for OEE, which requires manipulating Excel spreadsheets and performing simple calculation using standard keyboard and mouse.

*Megan must take a 10 minute break from typing, after 20 minutes, for rest or change of task.*

6. Coordinate training for operators, which may involve any or all of the activities listed above.

*See above.*

Sincerely,

*Azuka Nwigwe, DPT*  
Azuka Nwigwe, DPT

KELLY 0138

# EXHIBIT 17



**Palo Alto Medical  
Foundation**

A Sutter Health Affiliate

Fremont Center

3200 Kearney Street  
Fremont, CA 94538  
(510) 490-1222  
[www.pamf.org](http://www.pamf.org)

Megan Kelly  
2009 McGee Ave  
Apt 2  
Berkeley, CA 94703

May 31, 2007

MRN# 15221641

To Whom It May Concern:

Megan Kelly was seen and evaluated in clinic today. She may return to part-time work, which is 20 hours a week, with limited repetitive activities.

If you have any questions, please do not hesitate to call my office at (510) 490-1222.

Sincerely,

*Barry A. Rose, M.D.*

Barry A. Rose, M.D.  
Palo Alto Medical Foundation  
Fremont Center

KELLY 0134

Exhibit 17-1

# EXHIBIT 18

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MEGAN KELLY,

Plaintiff,

vs.

No. C-07-3002 MMC (EMC)

APPLERA CORPORATION,

Defendant.

CERTIFIED  
COPY

---

DEPOSITION OF MEGAN LYNN KELLY

San Francisco, California

Monday, February 11, 2008

Reported by:

DARCY J. BROKAW

RPR, CRR, CLR, CSR No. 12584

Job No. 82191

Exh. 18-1

**SARNOFF**

1 Q Now, I want to shift gears slightly and  
2 talk about your return to work in '07.

3 MS. McFADDEN: It's almost about 12:30.  
4 Is now a good time to take a break?

5 MR. PAETKAU: Yes. Let me just ask a few  
6 more questions on this topic, and then we'll break.

7 BY MR. PAETKAU:

8 Q When you came back to work -- and we'll  
9 talk after the lunch break about what happened, the  
10 communications in '06 and '07.

11 But when you came back in June of '07, did  
12 you have a new supervisor?

13 A Yes.

14 Q Who was that?

15 A Ana Evanchik, E-v-a-n-c-h-i-k.

16 Q How has it gone with her? Is she a good  
17 supervisor?

18 A I don't see much of her.

19 Q Have you had any issues with her, either  
20 personal or otherwise?

21 A There have been issues I have brought to  
22 her that have gone unresolved for a length of time.

23 Q Such as?

24 A Not having a phone in the office to do  
25 part of the work they've requested of me. Not



1 getting information about meeting notices. Not  
2 getting responses to questions asked, and similar  
3 things.

4 Q Do you recall anything else specifically,  
5 any other issues that she was not resolving quickly  
6 enough? Ms. Evanchik.

7 A I'm trying to think.

8 The list I gave you is not exhaustive.  
9 It's exhaustive, but I can't think of anything off  
10 the top of my head right now.

11 Q Okay. And that's part of what we're here  
12 today -- my job is to make sure I exhaust your  
13 memory as best as I can. So I'll come back to that.

14 But the phone, the meeting notices. The  
15 third thing you said was responses to questions that  
16 you had asked.

17 Do you recall any questions that you asked  
18 her, that is Ana Evanchik, that she was not, in your  
19 view, prompt enough in responding to?

20 A Questions on getting training for  
21 returning to lab work. We follow standard operating  
22 procedures in the lab, and they require that you  
23 have updated training before you do the lab work.  
24 And I requested that several times before it was  
25 finally granted that I was trained.

1 BY MR. PAETKAU:

2 Q I appreciate your answer. But you're  
3 saying now others asked for chairs in the lab?

4 A Yes.

5 Q Do you remember the names of anyone who  
6 asked for a chair in the lab?

7 A The entire production department.  
8 Everybody in the synthesizers group, and I don't  
9 remember names.

10 Q Okay. Did you, yourself ask for a chair  
11 at any time prior to going out on leave in September  
12 of '04?

13 A As part of the group, yes. When we moved  
14 to Pleasanton, we had chairs; and I don't remember  
15 when we moved to Pleasanton.

16 Q Okay. But starting when you moved to  
17 Pleasanton, there were chairs in the lab at that  
18 point in time?

19 A Yes.

20 MR. PAETKAU: Okay. Why don't we take a  
21 break for lunch.

22 (A lunch recess was taken.)

23 MS. McFADDEN: Now that we're back on the  
24 record, it seems one of the questions we left off on  
25 was the question of Ana Evanchik, her supervisor,

1 issues not resolved. And you were asking her to  
2 give a list, and I believe there was some  
3 clarification we needed to give in that regard.

4 Ms. Kelly.

5 THE WITNESS: Yes. Some problems with Ana  
6 have been when I returned to work on June 18th,  
7 apparently nobody knew what to do with me. There  
8 was no clear work to do; there was no job  
9 description, nothing was set up.

10 Also to deal with that, there were --  
11 there was an ergonomic request, ergonomic evaluation  
12 that was supposed to be done. It took a long time  
13 to get the ergonomic evaluation set up; and once it  
14 was set up and done, actually getting me equipment  
15 advised by the consultant took a long time and lots  
16 of e-mailing back and forth. It wasn't resolved  
17 quickly.

18 And then one of the things I did mention  
19 at least part of was that I wasn't getting  
20 notification of meetings. They were happening in  
21 places that -- they were being scheduled for places  
22 that I couldn't reach, on second floors without  
23 elevators. And when I requested notes from the  
24 meetings, I didn't get them after the first request.  
25 When I finally got them, I wasn't able to get

1 clarification on what they meant.

2 And there have been other group activity  
3 notifications, barbecues, employee get-togethers,  
4 that I haven't been told about or that have been  
5 scheduled on days where I couldn't attend.

6 BY MR. PAETKAU:

7 Q How many days a week are you working  
8 currently?

9 A I work three days a week.

10 Q Which days?

11 A Monday, Wednesday and Thursday.

12 Q So what you're saying is that if a meeting  
13 were scheduled on a day that you weren't there, you  
14 wouldn't necessarily be present to attend the  
15 meeting?

16 MS. McFADDEN: Misstates testimony.

17 THE WITNESS: If I had any notification of  
18 the meeting, I could try and arrange my schedule,  
19 but these are -- if I don't find out about it,  
20 there's no chance for me to do anything.

21 BY MR. PAETKAU:

22 Q So right now, you're working Monday,  
23 Tuesday, Wednesday?

24 A Monday, Wednesday, Thursday.

25 Q Monday, Wednesday, Thursday.

MEGAN LYNN KELLY

02/11/08

1  
2  
3  
4  
5  
6  
7  
8  
9 I, MEGAN LYNN KELLY, do hereby declare under  
10 penalty of perjury that I have read the foregoing  
11 transcript, that I have made corrections as appear noted, in  
12 ink, initiated by me; that my testimony as contained herein,  
13 as corrected, is true and correct.

14 EXECUTED this \_\_\_\_\_ of

15 \_\_\_\_\_ 2008, at

16 \_\_\_\_\_,  
17 City

State.

18  
19 \_\_\_\_\_  
20 MEGAN LYNN KELLY  
21  
22  
23  
24  
25

218

Exh. 18-7

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:


3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [ ] was [☒] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: FEB 15 2008

22  
23   
24 DARCY J. BROKAW  
25 CSR No. 12584